

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)
Plaintiff,) 8:05CR356
vs.)
RICHARD L. SMULL,)
Defendant.) ORDER

This matter is before the court on the motion to continue by defendant Richard L. Smull (Smull) (Filing No. 19). Smull seeks a continuance of the trial of this matter scheduled for January 17, 2006. Smull's counsel represents that counsel for the government has no objection to the motion. Smull has submitted an affidavit in accordance with paragraph 9 of the progression order whereby Smull consents to the motion and acknowledges he understands the additional time may be excludable time for the purposes of the Speedy Trial Act. Upon consideration, the motion will be granted.

IT IS ORDERED:

1. Smull's motion to continue trial (Filing No. 19) is granted.
2. Trial of this matter is re-scheduled for **February 13, 2006**, before Chief Judge Joseph F. Bataillon and a jury. The ends of justice have been served by granting such motion and outweigh the interests of the public and the defendant in a speedy trial. The additional **time** arising as a result of the granting of the motion, i.e., the time between **January 10, 2006 and February 13, 2006**, shall be deemed **excludable** time in any computation of time under the requirement of the Speedy Trial Act for the reason that defendant's counsel requires additional time to adequately prepare the case. The failure to grant additional time might result in a miscarriage of justice. 18 U.S.C. § 3161(h)(8)(A) & (B).

DATED this 10th day of January, 2006.

BY THE COURT:

s/Thomas D. Thalken
United States Magistrate Judge